

Minutes  
Catawba County Board of Commissioners  
Special Session, Wednesday, January 2, 2002, 3:00 p.m.

The Catawba County Board of Commissioners met in special session on Wednesday, January 2, 2002, 3:00 p.m., at the 1924 Courthouse, Robert E. Hibbitts Meeting Room, 30 North College Avenue, Newton, North Carolina.

Present were Chairman W. Steve Ikerd, Vice-Chair Marie H. Huffman, and Commissioners Katherine W. Barnes, Barbara G. Beatty, and Dan A. Hunsucker.

Absent: None.

A quorum was present.

Also present were County Manager/Deputy Clerk J. Thomas Lundy, Deputy County Manager Steven D. Wyatt, County Attorney Robert Oren Eades, and County Clerk Thelda B. Rhoney.

1. Chairman Ikerd called the special meeting to order at 3:00 p.m. He offered the invocation. He said the purpose of the meeting was to discuss the completion of purchase of property located at 3889 Rocky Ford Road in the settlement of the lawsuit Catawba County v. Jack and Charles Wilfong, 00 CVS 3270, and pending litigation in Catawba County v. Charlotte Mauser, Robert Mauser, and Sarah K. Mauser, 00 CVS 3391 and 00 CVS 3392 and offer to purchase real property.
2. Completion of purchase of property located at 3889 Rocky Ford Road in the settlement of the lawsuit Catawba County v. Jack and Charles Wilfong, 00 CVS 3270.

County Attorney Robert Oren Eades reported that a settlement had been reached with the Wilfongs for the acquisition of 110 acres of property near the Blackburn Landfill located at 3889 Rocky Ford Road in the amount of \$1,200,000. Mr. Eades said this matter was discussed by the Board previously in a closed session authorizing him to enter into the settlement on behalf of the County. The court has signed the order and filed. The Wilfongs will be allowed to stay in the home until December 31, 2006. As long as it does not interfere with operation or expansion of the landfill, the Wilfongs can mow grass for hay, harvest timber, salvage or remove buildings and items of personal property now located on the condemned land until December 31, 2006. The barn will remain on the condemned land.

Mr. Eades requested that the consent judgment be entered into the record:

NORTH CAROLINA

COUNTY OF CATAWBA

CATAWBA COUNTY )  
A North Carolina Body Politic, Plaintiff )  
vs. )  
CHARLES S. WILFONG and )  
JACK C. WILFONG, Defendants. )

CIVIL ACTION  
IN THE GENERAL COURT  
OF JUSTICE  
SUPERIOR COURT DIVISION  
File No. 2000 CVS 3270

CONSENT JUDGMENT

THIS CAUSE, coming on to be heard before the Honorable Richard Doughton, Superior Court Judge Presiding, it having been stipulated by the Parties and the Court finding as a fact the following:

1. This action was duly instituted on the 25<sup>th</sup> day of October, 2000, by the issuance of Summons and the filing of a Complaint, Declaration of Taking, and Notice of Deposit, along with the deposit of \$491,200.00, the sum estimated by Plaintiff to be just compensation for the taking of the property of Defendants.
2. Summons, together with a copy of the Complaint, Declaration of Taking and Notice of Deposit were duly served upon each of the Defendants as they appear of record.

3. All persons having or claiming to have an interest in the condemned land are parties hereto and are duly before the Court.
4. The Parties have now settled all matters in controversy between them, and as agreed by the Parties, the sum of \$1,200,000.00, which includes any claim by Defendants to interest or relocation expense, is the full and adequate value of, and represents just compensation for, the taking of Defendants' property, including all improvements located on such property.
5. The Parties have further agreed:
  - a) Defendants will be permitted to remove from the yard immediately surrounding their house any ornamental trees or shrubbery not needed for use by Plaintiff. This right of removal shall expire on 31 December 2006.
  - b) Defendants will be permitted to mow grass for hay on the grass field located on the West side of Wilfong Road and on the grass field located on the North side of Rocky Ford Road so long as such fields are not needed by Plaintiff or such use does not impede operation or expansion of the Catawba County Blackburn Landfill, as either is determined in the sole discretion of Plaintiff. Upon making such determination, Plaintiff will provide not less than four weeks written notice to Defendants that such use must cease upon the date specified in the notice. Upon the date so specified, Defendants shall cease such use.
  - c) Defendants will be permitted to harvest timber from the condemned land so long as such use does not impede operation or expansion of the Catawba County Blackburn Landfill, as either is determined in the sole discretion of Plaintiff. Upon making such determination, Plaintiff will provide not less than four weeks written notice to Defendants that such use must cease upon the date specified in the notice. Upon the date so specified, Defendants shall cease such use.
  - d) Defendants will be permitted to reside in the house they now occupy and located upon the condemned land until 31 December 2006. Occupancy after this time may continue but at the sole discretion of Plaintiff. Plaintiff will use its best efforts to give Defendants six months written notice to vacate the premises, but failure to do so will not create any cause of action or claim of any type against Plaintiff or extend the time in which Defendants may reside on or use the land. The Parties shall enter into a written Lease specifying with more particularity the terms upon which Defendants will be permitted to continue occupancy of said house, but no term of such lease will in any way contradict the terms of this Consent Judgment. In part, such lease will provide that Plaintiff will insure the structures located on the property against loss resulting from fire or other property damage, that Defendants will maintain adequate public liability insurance against bodily injury or death, will insure all personal property located on the property which is owned by Defendants, or, in the alternative, will execute an indemnification and hold harmless agreement in favor of Catawba County relating to any such claims or losses.
  - e) Defendants will be permitted to salvage or remove buildings, building materials and items of personal property now located on the condemned land. This right shall expire on 31 December 2006. This right does not apply to the large barn located behind the Wilfong residence on the condemned land.

ON THE FOREGOING STIPULATIONS, THE COURT CONCLUDES AS A MATTER OF LAW THE FOLLOWING:

1. Plaintiff was entitled to acquire and did acquire on the 25<sup>th</sup> day of October 200, the property of Defendants as described herein.
2. These proceedings as appears from the Pleadings are regular in every respect and no just cause has been shown against granting the prayer contained in the Complaint, Declaration and Notice.
3. Except as expressly set forth herein in Sub-Paragraphs 5(a) through 5(e), Defendants are not entitled to any further relief from Plaintiff as a result of the taking.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff, Catawba County, on the 25<sup>th</sup> day of October 2000, by the filing of the Complaint, Declaration of Taking, and Notice of Deposit, has condemned and shall be permanently vested with the property, interest or estate, described on the attached Exhibit A.

2. Catawba County shall pay into the Court the additional sum of \$708,800.00.

3. The total sum of \$1,200,000.00, deposited herein by Plaintiff shall, by agreement between the Parties, be disbursed by the Clerk of Court as follows:

Defendant Charles S. Wilfong: \$600,000.00.

Defendant Jack C. Wilfong: \$600,000.00.

4. A copy of this Judgment shall be certified under seal of the Court to the Register of Deeds of this County, and the Register of Deeds shall be ordered to record this Judgment among the land records of this County.

5. Each Party shall be responsible for attorneys fees, court costs, or other charges incurred by it relating to this action.

This the \_\_\_ day of December 2001.

\_\_\_\_\_  
Judge Richard Doughton,  
Superior Court Judge Presiding

CONSENTED TO:

Plaintiff, CATAWBA COUNTY

By: \_\_\_\_\_  
Robert O. Eades, County Attorney

Defendants Charles S. Wilfong and Jack C. Wilfong

\_\_\_\_\_  
Charles S. Wilfong

\_\_\_\_\_  
Jack C. Wilfong

#### EXHIBIT ?A?

##### Tract 1:

BEGINNING at a point in the center of Rocky Ford Road (NCSR 2019), the northeastern corner of Wilfong (Deed Book 455, Page 162) and the northwestern corner of Mauser (Deed Book 1020, Page 265) and following the Mauser line South 08° 24' 54" East 30.32 feet to an r/r spike set in the southern right-of-way for NCSR 2019, continuing with said line 1732.86 feet to a pin set in the northern margin of the right-of-way for Wilfong Road (NCSR 2020), continuing with said line 75.61 feet to a pin found in the southern margin of the right-of-way for Wilfong Road, continuing with said line 1,612.52 feet to a pin; thence South 26° 53' 19" East 37.15 feet; thence South 76° 30' 07" West 516.97 feet to the eastern line of Catawba County (Deed Book 1261, Page 110); thence following the Catawba County line North 12° 05' 45" West 2041.38 feet to an existing iron pin; thence South 86° 50' 35" West 807.21 feet to an existing iron pin; thence North 10° 56' 57" West 1,634.36 feet to the center of NCSR 2019; thence with the arc of a circular curve to the right having a radius of 1075.00 feet, an arc of 300.35 feet and a chord bearing of North 82° 21' 15" West with a chord distance of 299.37 feet to a point; thence following the centerline of NCSR 2019 North 89° 38' 31" East 935.27 feet to a point, thence with the arc of a circular curve to the left having a radius of 1000.00 feet, an arc of 285.44 feet and a chord bearing of North 81° 27' 52" East with a chord distance of 284.47 feet to a point; thence North 73° 17' 14" East 12.23 feet to the Point of Beginning containing 78.38 total acres and referenced as Tract 1 from a survey by J. Mike Honeycutt, PLS, entitled: ?A boundary survey for: Catawba County? dated October 18, 2000 (JMH File: C-337)

Tract 2:

Beginning at a MAG nail located in the intersection of NCSR 2019 and Beech Tree Street, said point being located South 76° 48' 02" West 552.68 feet from NCGS station ?Honey? thence with the centerline of NCSR 2109 South 74° 08' 12" West 324.03 feet to a point; thence with the arc of a circular curve to the left having a radius of 5000.00 feet, an arc of 75.23 feet, and a chord bearing of South 73° 43' 06" West with a chord distance of 75.23 feet to a point; thence South 73° 17' 14" West 545.24 feet to a point; thence with the arc of a circular curve to the right having a radius of 1000.00 feet, an arc of 285.44 feet, and a chord bearing of South 81° 27' 52" West with a chord distance of 284.47 feet to a point; thence South 89° 38' 31" West 356.29 feet to an existing PK Nail in the centerline of NCSR 2019; thence with Catawba County (Deed Book 1586, Page 799) North 12° 42' 04" East 1351.10 feet to an existing iron pin passing an existing iron pin at 29.86 feet; thence North 78° 29' 46" East 179.94 feet to an existing stone; thence with Catawba County and Robert Sutton line (Deed Book 1860, Page 179) South 21° 03' 26" East 293.70 feet to an existing iron pin; thence with Sutton North 73° 56' 42" East 712.06 feet to a tack in a stone; thence with the line of Eugene B. Willis (Deed Book 1155, Page 591) South 16° 11' 42" East 284.88 feet to an existing iron pin in Beech Tree Street (right-of-way recorded in Plat Book 33; Page 24 of the Catawba County Registry), southwestern corner of Willis and northwest corner of Perry L. Cook, Jr. (Deed Book 1840, Page 75); thence with the line of Cook, South 16° 11' 42" East 361.12 feet to an existing iron pin; thence continuing with said line a distance of 359.77 feet to the Point of Beginning, containing 32.64 acres and referenced as Tract 2 from a survey by J. Mike Honeycutt, PLS, entitled: ?A boundary survey for: Catawba County? dated October 18, 2000 (JMH File: C-337)

Tract 3:

Beginning at an existing iron pin found in the northern line of Chu (Deed Book 1739, Page 958) and the southeast corner of Catawba County (Deed Book 1261, Page 110) and following the Catawba County eastern line North 12° 05' 45" West 328.78 feet to a point; thence North 76° 30' 07" East 516.97 feet to a point, the western line of Mauser (Deed Book 1020, Page 265); thence South 26° 53' 19" East 339.05 feet to a iron pin, the northern line of Knox (Deed Book 1045, Page 797); thence South 76° 36' 41" West 603.54 feet to the Point of Beginning, containing 4.23 acres from a survey by J. Mike Honeycutt, PLS, entitled: ?A boundary survey for: Catawba County? dated October 18, 2000 (JMH File: C-337). The Grantor claims title to Tract 3 by adverse possession.

3. Pending litigation in Catawba County v. Charlotte Mauser, Robert Mauser, and Sarah K. Mauser, 00 CVS 3391 and 00 CVS 3392 and offer to purchase real property.

County Attorney Eades said the condemnation action was instituted to obtain property located at the Blackburn Landfill. Mr. Eades said after the hearings before the local court it was his recommendation that the Board take a voluntary dismissal in that action without prejudice which will allow the County to file a similar action again if deemed appropriate in the future. Under the terms of the proposed consent judgment, \$524,500 was paid on deposit and will be returned to the County. A quitclaim deed will be executed from the County back to the Mausers conveying the property back to them. The consent judgment authorizes that we be allowed to do that without complying with the normal statutory requirements for the disposal of real property. The consent judgment obligates the county to pay costs including legal fees incurred by the Mausers in this action.

Attorney Eades recommended that the Board authorize him to enter into the consent judgment on behalf of the County and he will appear before Judge Doughton on Friday morning.

Commissioner Huffman made a motion to authorize County Attorney Eades to enter into a Consent Judgments on behalf of the County in these two cases. The motion carried unanimously.

4. County Attorney Robert Oren Eades requested that the Board consider a Closed Session, in accordance with NCGS 143-318.11 (a) (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body; and (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease. Attorney Eades said he did not anticipate any action after closed session.

At 3:05 p.m. Commissioner Barnes made a motion to recess into Closed Session, in accordance with NCGS 143-318.11 (a) (3) To consult with an attorney employed or retained by the public body in order to preserve the

attorney-client privilege between the attorney and the public body; and (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.

At 3:15 p.m., the Board returned to open session and there being no further business to come before the Board, Commissioner Hunsucker made a motion to adjourn. The motion carried unanimously.

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W. Steve Ikerd, Chairman  
Catawba County Board of Commissioners

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Thelda B. Rhoney  
County Clerk